

GIDEON KRACOV

Attorney at Law

801 South Grand Avenue
11th Floor
Los Angeles, California 90017

(213) 629-2071
Fax: (213) 623-7755

gk@gideonlaw.net
www.gideonlaw.net

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

January 23, 2015

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
12000 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Jared Blumenfeld, Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA 94105

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Kurt V. Berchtold, Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street
Suite 500
Riverside, CA 92501-3348

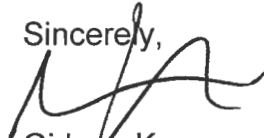
RE: CCAEJ v. James Hardie Building Products, Inc.. 5:15-cv-00144

Dear Madam and Sirs:

Pursuant to 40 CFR Section 135.4, please see enclosed a copy of the filed Complaint in the referenced matter filed January 23, 2015.

Should you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to be 'Gideon Kracov', written over the word 'Sincerely,'.

Gideon Kracov

Encl.

1 Gideon Kracov (State Bar No. 179815)
2 LAW OFFICE OF GIDEON KRACOV
3 801 S. Grand Avenue, 11th Floor
4 Los Angeles, CA 90017-4645
5 Tel: (213) 629-2071
6 Fax: (213) 623-7755
7 Email: gk@gideonlaw.net

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9 Attorneys for Plaintiff
10 CENTER FOR COMMUNITY ACTION
11 AND ENVIRONMENTAL JUSTICE

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CENTER FOR COMMUNITY
ACTION AND ENVIRONMENTAL
JUSTICE, a non-profit corporation,

Plaintiff,

vs.

JAMES HARDIE BUILDING
PRODUCTS, INC., a corporation,
DOES 1 through 10,

Defendants.

Case No. 5:15-cv-00144

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES

(Federal Water Pollution Control Act, 33
U.S.C. §§ 1251 to 1387)

CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL
JUSTICE ("CCA EJ" or "Plaintiff"), a California non-profit corporation, by and
through its counsel, hereby alleges:

1 **I. JURISDICTION AND VENUE**

2 1. This is a civil suit brought under the citizen suit enforcement provisions
3 of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean
4 Water Act” or “the Act”). This Court has subject matter jurisdiction over the parties
5 and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33
6 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the
7 United States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201-02
8 (power to issue declaratory relief in case of actual controversy and further necessary
9 relief based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief);
10 and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

11 2. On November 21, 2014, Plaintiff provided notice of Defendant’s
12 violations of the Act, and of its intention to file suit against Defendant, to the
13 Administrator of the United States Environmental Protection Agency (“EPA”); the
14 Administrator of EPA Region IX; the Executive Director of the State Water
15 Resources Control Board (“State Board”); the Executive Officer of the California
16 Regional Water Quality Control Board, Santa Ana Region (“Regional Board”); and to
17 Defendant JAMES HARDIE BUILDING PRODUCTS, INC. (“HARDIE”), as
18 required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of the notice
19 letter is attached as Exhibit A, and is incorporated by reference.

20 3. More than sixty days have passed since notice was served on HARDIE
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1 and the State and federal agencies. Plaintiff is informed and believes, and thereupon
2 alleges, that neither the EPA nor the State of California has commenced or is
3 diligently prosecuting a court action to redress the violations alleged in this complaint.
4 This action's claim for civil penalties is not barred by any prior administrative penalty
5 under Section 309(g) of the Act, 33 U.S.C. § 1319(g).
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8 4. Venue is proper in the Central District of California pursuant to Section
9 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is
10 located within this judicial district.
11

12 **II. INTRODUCTION**

13 5. This complaint seeks relief for discharges of storm water and non-storm
14 water pollutants from Defendant HARDIE'S industrial gas processing facility located
15 at 10901 Elm Avenue, Fontana, California 92337 (hereinafter "Facility") in violation
16 of the Act and National Pollutant Discharge Elimination System ("NPDES") Permit
17 No. CA S000001, State Water Resources Control Board Water Quality Order
18 No. 91-13-DWQ, as amended by Water Quality Order No. 92-12-DWQ and Water
19 Quality Order No. 97-03-DWQ (hereinafter the "Permit" or "General Permit").
20 Defendant's failure to comply with the discharge, treatment technology, monitoring
21 requirements, and other procedural and substantive requirements of the Permit and the
22 Act are ongoing and continuous.
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1 **III. PARTIES**

2 6. Plaintiff CCAEJ is a non-profit public benefit corporation under the laws
3 of the State of California with its main office in Jurupa Valley, California. CCAEJ
4 dedicated to working with communities to advocate for environmental justice and
5 pollution prevention. CCAEJ and its members are deeply concerned with protecting
6 the environment in and around their communities, including the Santa Ana River
7 Watershed. To further these goals, CCAEJ actively seeks federal and state agency
8 implementation of the Act and other laws and, where necessary, directly initiates
9 enforcement actions on behalf of itself and its members.
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13 7. CCAEJ has members living in the community adjacent to the Facility
14 and the Santa Ana River Watershed. They enjoy using the Santa Ana River for
15 recreation and other activities. Members of CCAEJ use and enjoy the waters into
16 which Defendant has caused, is causing, and will continue to cause, pollutants to be
17 discharged. Members of CCAEJ use those areas to recreate and view wildlife, among
18 other things. Defendant's discharges of pollutants threaten or impair each of those
19 uses or contribute to such threats and impairments. Thus, the interests of CCAEJ's
20 members have been, are being, and will continue to be adversely affected by
21 Defendant's failure to comply with the Clean Water Act and the Permit. Therelief
22 sought herein will redress the harms to Plaintiff caused by Defendant's activities.
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27 8. Continuing commission of the acts and omissions alleged above will
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1 irreparably harm Plaintiff and its members, for which harm they have no plain, speedy
2 or adequate remedy at law.

3 9. Plaintiff alleges on information and belief that Defendant HARDIE, INC.
4 is a California corporation that operates the Facility in Fontana, California.
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6 10. Upon information and belief, and upon that basis, Plaintiff alleges that
7 the true names, or capacities of DOES 1 through 10, inclusive (the "DOES"), whether
8 individual, corporate, associate or otherwise, are presently unknown to PLAINTIFF,
9 who therefore sue said Defendants by such fictitious names. Plaintiff will amend this
10 Complaint to show their true names and capacities when the same have been
11 ascertained. Whether or not HARDIE is associated with any other individual,
12 corporate, associate or otherwise was not immediately apparent through an initial
13 investigation completed by PLAINTIFF.
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17 11. HARDIE and DOES 1 through 10 are referred to collectively throughout
18 this Complaint as Defendant or Defendants.
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20 **IV. STATUTORY BACKGROUND**

21 12. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of
22 any pollutant into waters of the United States, unless such discharge is in compliance
23 with various enumerated sections of the Act. Among other things, Section 301(a)
24 prohibits discharges not authorized by, or in violation of, the terms of an NPDES
25 permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
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1 13. Section 402(p) of the Act establishes a framework for regulating
2 municipal and industrial storm water discharges under the NPDES program. 33
3 U.S.C. § 1342(p). States with approved NPDES permit programs are authorized by
4 Section 402(p) to regulate industrial storm water discharges through individual
5 permits issued to dischargers or through the issuance of a single, statewide general
6 permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(p).
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9 14. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator
10 of the U.S. EPA has authorized California's State Board to issue NPDES permits,
11 including general NPDES permits, in California.
12

13 15. The State Board elected to issue a statewide general permit for industrial
14 storm water discharges. The State Board issued the General Permit on or about
15 November 19, 1991, modified the General Permit on or about September 17, 1992,
16 and reissued the General Permit on or about April 17, 1997, pursuant to Section
17 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).
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20 16. In order to discharge storm water lawfully in California, industrial
21 dischargers must comply with the terms of the General Permit or have obtained and
22 complied with an individual NPDES permit. 33 U.S.C. § 1311(a).
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24 17. The General Permit contains several prohibitions. Effluent Limitation
25 B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their
26 storm water discharges through implementation of the Best Available Technology
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1 Economically Achievable (“BAT”) for toxic and nonconventional pollutants and the
2 Best Conventional Pollutant Control Technology (“BCT”) for conventional pollutants.
3 BAT and BCT include both nonstructural and structural measures. General Permit,
4 Section A(8). Discharge Prohibition A(2) of the General Permit prohibits storm water
5 discharges and authorized non-storm water discharges that cause or threaten to cause
6 pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the
7 General Permit prohibits storm water discharges to any surface or ground water that
8 adversely impact human health or the environment. Receiving Water Limitation C(2)
9 of the General Permit prohibits storm water discharges that cause or contribute to an
10 exceedance of any applicable water quality standards contained in Statewide Water
11 Quality Control Plan or the applicable Regional Board’s Basin Plan. *See Baykeeper v.*
12 *Int’l Metals Ekco, Ltd.*, 619 F.Supp.2d 936, 945 (C.D. Cal. 2009).
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17 18. In addition to absolute prohibitions, the General Permit contains a variety
18 of substantive and procedural requirements that dischargers must meet. Facilities
19 discharging, or having the potential to discharge, storm water associated with
20 industrial activity that have not obtained an individual NPDES permit must apply for
21 coverage under the State’s General Permit by filing a Notice of Intent to Comply
22 (“NOI”). The General Permit requires existing dischargers to have filed their NOIs
23 before March 30, 1992.
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27 19. Dischargers must develop and implement a Storm Water Pollution
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1 Prevention Plan ("SWPPP"). The SWPPP must describe storm water control facilities
2 and measures that comply with the BAT and BCT standards. The General Permit
3 requires that an initial SWPPP have been developed and implemented before October
4 1, 1992. The SWPPP must, among other requirements, identify and evaluate sources
5 of pollutants associated with industrial activities that may affect the quality of storm
6 and non-storm water discharges from the facility and identify and implement site-
7 specific best management practices ("BMPs") to reduce or prevent pollutants
8 associated with industrial activities in storm water and authorized non-storm water
9 discharges (Section A(2)). The SWPPP's BMPs must implement BAT and BCT
10 (Section B(3)). The SWPPP must include: a description of individuals and their
11 responsibilities for developing and implementing the SWPPP (Section A(3)); a site
12 map showing the facility boundaries, storm water drainage areas with flow pattern and
13 nearby water bodies, the location of the storm water collection, conveyance and
14 discharge system, structural control measures, impervious areas, areas of actual and
15 potential pollutant contact, and areas of industrial activity (Section A(4)); a list of
16 significant materials handled and stored at the site (Section A(5)); a description of
17 potential pollutant sources including industrial processes, material handling and
18 storage areas, dust and particulate generating activities, and a description of
19 significant spills and leaks, a list of all non-storm water discharges and their sources,
20 and a description of locations where soil erosion may occur (Section A(6)). The
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1 SWPPP must include an assessment of potential pollutant sources at the Facility and a
2 description of the BMPs to be implemented at the Facility that will reduce or prevent
3 pollutants in storm water discharges and authorized non-storm water discharges,
4 including structural BMPs where non-structural BMPs are not effective (Section A(7),
5 (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised
6 where necessary (Sections A(9), (10)).
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9 20. Section C(11)(d) of the General Permit's Standard Provisions requires
10 dischargers to report any noncompliance to the Regional Board. *See also* Section
11 E(6). Section A(9) of the General Permit requires an annual evaluation of storm water
12 controls including the preparation of an evaluation report and implementation of any
13 additional measures in the SWPPP to respond to the monitoring results and other
14 inspection activities.
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17 21. The General Permit requires dischargers commencing industrial activities
18 before October 1, 1992 to develop and implement an adequate written monitoring and
19 reporting program no later than October 1, 1992. Existing facilities covered under the
20 General Permit must implement all necessary revisions to their monitoring programs
21 no later than August 1, 1997.
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24 22. As part of their monitoring program, dischargers must identify all storm
25 water discharge locations that produce a significant storm water discharge, evaluate
26 the effectiveness of BMPs in reducing pollutant loading, and evaluate whether
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1 pollution control measures set out in the SWPPP are adequate and properly
2 implemented. Dischargers must conduct visual observations of these discharge
3 locations for at least one storm per month during the wet season (October through
4 May) and record their findings in their Annual Report. Dischargers must also collect
5 and analyze storm water samples from at least two storms per year. Section B(5)(a) of
6 the General Permit requires that dischargers “shall collect storm water samples during
7 the first hour of discharge from (1) the first storm event of the wet season, and (2) at
8 least one other storm event in the wet season. All storm water discharge locations
9 shall be sampled.” Section B(5)(c)(i) requires dischargers to sample and analyze
10 during the wet season for basic parameters, such as pH, total suspended solids,
11 electrical conductance, and total organic content or oil & grease, certain industry-
12 specific parameters. Section B(5)(c)(ii) requires dischargers to sample for toxic
13 chemicals and other pollutants likely to be in the storm water discharged from the
14 facility. Section B(5)(c)(iii) requires discharges to sample for parameters dependent
15 on a facility’s standard industrial classification (“SIC”) code. Section B(7)(a)
16 indicates that the visual observations and samples must represent the “quality and
17 quantity of the facility’s storm water discharges from the storm event.” Section
18 B(7)(c) requires that “if visual observation and sample collection locations are
19 difficult to observe or sample...facility operators shall identify and collect samples
20 from other locations that represent the quality and quantity of the facility’s storm
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1 water discharges from the storm event.”

2 23. The General Permit requires that facility operators “investigate the
3 facility to identify all non-storm water discharges and their sources. As part of this
4 investigation, all drains (inlets and outlets) shall be evaluated to identify whether they
5 connect to the storm drain system. All non-storm water discharges shall be described.
6 This shall include the source, quantity, frequency, and characteristics of the non-storm
7 water discharges and associated drainage area.” Section A(6)(a)(v). The General
8 Permit authorizes certain non-storm water discharges providing that the non-storm
9 water discharges are in compliance with Regional Board requirements; that the non-
10 storm water discharges are in compliance with local agency ordinances and/or
11 requirements; that best management practices (“BMPs”) are included in the Storm
12 Water Pollution Prevention Plan to (1) prevent or reduce the contact of non-storm
13 water discharges with significant materials or equipment and (2) minimize, to the
14 extent practicable, the flow or volume of non-storm water discharges; that the non-
15 storm water discharges do not contain significant quantities of pollutants; and that the
16 monitoring program includes quarterly visual observations of each non-storm water
17 discharge and its sources to ensure that BMPs are being implemented and are
18 effective (Special Conditions D). Section B(3) of the General Permit requires
19 dischargers to conduct visual observations of all drainage areas for the presence of
20 non-storm water discharges, to observe the non-storm water discharges, and maintain
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1 records of such observations.

2 24. Section B(14) of the General Permit requires dischargers to submit an
3 annual report by July 1 of each year to the executive officer of the relevant Regional
4 Board. The annual report must be signed and certified by an appropriate corporate
5 officer. Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires
6 the discharger to include in their annual report an evaluation of their storm water
7 controls, including certifying compliance with the General Permit. *See also* Sections
8 C(9), C(10) and B(14).
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11 25. The General Permit does not provide for any mixing zones by
12 dischargers. The General Permit does not provide for any dilution credits to be
13 applied by dischargers.
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16 26. The Regional Board has identified beneficial uses of the Santa Ana River
17 Watershed and established water quality standards for the river and its tributaries in
18 "The Water Quality Control Plan (Basin Plan) for the Santa Ana River Basin"
19 (hereinafter "Basin Plan"). See California Regional Water Quality Control Board,
20 Santa Ana Region, The Water Quality Control Plan (Basin Plan) for the Santa Ana
21 River Basin (2011), available at
22 http://www.swrcb.ca.gov/rwqcb8/water_issues/programs/basin_plan/index.shtml.
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25 27. The beneficial uses of these waters include, among others, municipal and
26 domestic supply, agricultural supply, groundwater recharge, water contact recreation,
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1 non-contact water recreation, warm freshwater habitat, cold freshwater habitat, and
2 wildlife habitat. The non-contact water recreation use is defined as “[u]ses of water
3 for recreational activities involving proximity to water, but not normally involving
4 contact with water where water ingestion is reasonably possible.” Id. at 3-3. These
5 uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing,
6 camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic
7 enjoyment in conjunction with the above activities.” Id. Contact recreation use
8 includes fishing and wading. Id. at 3-2. Visible pollution, including visible sheens
9 and cloudy or muddy water from industrial areas, impairs people’s use of the Santa
10 Ana River for contact and non-contact water recreation.
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14 28. The Basin Plan includes a narrative toxicity standard which states that
15 “[t]oxic substances shall not be discharged at levels that will bioaccumulate in aquatic
16 resources to levels which are harmful to human health.” Id. at 4-18. The Basin Plan
17 includes a narrative oil and grease standard which states that “[w]aste discharges shall
18 not result in deposition of oil, grease, wax, or other material in concentrations which
19 result in a visible film or in coating objects in the water, or which cause a nuisance or
20 adversely affect beneficial uses.” Id. at 4-15. The Basin Plan includes a narrative
21 suspended and settleable solids standard which states that “waters shall not contain
22 suspended or settleable solids in amounts which cause a nuisance or adversely affect
23 beneficial uses” Id. at 4-16. The Basin Plan includes a narrative floatables
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1 standard which states that “[w]aste discharges shall not contain floating materials,
2 including solids, liquids, foam or scum, which cause a nuisance or adversely affect
3 beneficial uses.” Id. at 4-11. The Basin Plan includes a narrative color standard
4 which states that “[w]aste discharges shall not result in coloration of the receiving
5 waters which causes a nuisance or adversely affect beneficial uses.” Id. at 4-10. The
6 Basin Plan includes a narrative turbidity standard which states that “inland surface
7 waters . . . shall be free of changes in turbidity which adversely affect beneficial uses.
8 Id. at 4-18. The Basin Plan provides that “the pH of inland surface waters shall not be
9 raised above 8.5 or depressed below 6.5...” Id. at 4-15.

13 29. The EPA has published benchmark levels as guidelines for determining
14 whether a facility discharging industrial storm water has implemented the requisite
15 best available technology economically achievable (hereinafter “BAT”) and best
16 conventional pollutant control technology (hereinafter “BCT”). The following
17 benchmarks have been established for pollutants discharged by HARDIE: Total
18 Suspended Solids (TSS) – 100 mg/L, oil and grease – 15.0 mg/L (“O&G”), pH – 6-9
19 s.u., and Iron (Fe) – 1.0 mg/L. U.S. Environmental Protection Agency, Multi-Sector
20 General Permit for Stormwater Discharges Associated with Industrial Activity (2009)
21 52 (hereinafter “MSGP”). *See Baykeeper v. Int’l Metals Ekco, Ltd.*, 619 F.Supp.2d
22 936, 945 (C.D. Cal. 2009) (“There can be no reasonable dispute that the Benchmarks
23 are relevant to the inquiry as to whether a facility implemented BMPs”);
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1 *Waterkeepers Northern California v. AG Industrial Mfg. Inc.*, 375 F.3d 913, 919 n.5
2 (9th Cir. 2004) (plaintiff appropriately pointed to EPA benchmark values “as evidence
3 to support its claim that [the defendant] failed to implement adequate BMPs”);
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5 30. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
6 enforcement actions against any “person,” including individuals, corporations, or
7 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1)
8 and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33
9 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil
10 penalties of up to \$32,500 per day per violation for all violations occurring through
11 January 12, 2009, and \$37,500 per day per violation for all violations occurring after
12 January 12, 2009, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§
13 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 - 19.4.
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17 **V. STATEMENT OF FACTS**
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19 31. In its NOI, HARDIE certified that the Facility is classified under SIC
20 Code 3272 (Concrete and Gypsum Products). HARDIE is a fiber-cement product
21 company, specializing in lap sidings, vertical sidings, shingles, panels, pipes, and
22 ceramic tile backer boards. On information and belief, CCAEJ alleges that the 20-acre
23 Facility collects and discharges storm water from its industrial site into five or more
24 storm drain outfalls located at the Facility. The outfalls discharge into San Bernardino
25 County’s municipal storm sewer system, which flows into Declez Channel, which
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1 flows into the Santa Ana River.

2 32. On information and belief, Plaintiff alleges that the management
3 practices at the Facility do not prevent the sources of contamination described above
4 from causing the discharge of pollutants to waters of the United States.
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6 33. Since at least January 26, 2010, HARDIE has taken samples or arranged
7 for samples to be taken of storm water discharges at the Facility. The sample results
8 were reported in the Facility's annual reports submitted to the Regional Board.
9 HARDIE certified each of those annual reports pursuant to Sections A and C of the
10 General Permit.
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13 34. Since at least January 26, 2010, the Facility has detected pH, TSS and
14 iron, in storm water discharged from the Facility. Levels of pH detected in the storm
15 water have been outside of the parameters for water quality standards in violation of
16 the Basin Plan. Levels of these pollutants detected in the Facility's storm water have
17 been in excess of EPA's numeric parameter benchmark values. As detailed in the
18 notice letter attached as Exhibit A and fully incorporated herein, the following dates
19 contained concentrations of pollutants in excess of the numeric water quality
20 standards and/or narrative water quality established in the Basin Plan: April 25, 2014,
21 February 6, 2014, May 6, 2013, April 1, 2013, January 25, 2013, November 8, 2012,
22 October 11, 2012, December 20, 2011, October 7, 2011 and January 26, 2010. This
23 information reflects data gathered from HARDIE's self-monitoring during the 2010-
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1 2011, 2011-2012, 2012-2013 and 2013-2014 wet seasons.

2 35. Discharges on the following dates at multiple outfalls from the Facility
3 contained concentrations of pollutants in excess of the numeric EPA water quality
4 benchmarks: April 25, 2014, February 6, 2014, May 6, 2013, October 11, 2012,
5 February 10, 2012, December 12, 2011, and January 30, 2010 for pH, TSS and/or iron
6 This information in reflects data gathered from HARDIE's self-monitoring during the
7 2010-2011, 2011-2012, 2012-2013 and 2013-2014 wet seasons.
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9 36. The level of TSS in storm water detected by the Facility has exceeded the
10 benchmark value for TSS of 100 mg/L established by EPA. For example, on May 6,
11 2013, 800 mg/L was measured in outfall location #2.
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13 37. The level of iron in storm water detected by the Facility has exceeded the
14 benchmark value of 1.0 mg/L established by EPA. For example, on May 6, 2013,
15 140.0 mg/L was measured in outfall location #1.
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17 38. The level of pH in storm water detected by the Facility has exceeded the
18 benchmark value of 6-9 s.u. established by EPA. For example, on May 6, 2013, 9.8
19 s.u. was measured in outfall location #1.
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21 39. CCAEJ also alleges on information and belief that HARDIE failed to
22 conduct visual observations in November 2009, March 2010, April 2010, April 2011,
23 November 2011, January 2012, March 2013, October 2013, November 2013,
24 December 2013, and March 2014 claiming that there were no qualifying rain events
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1 when in fact there were numerous such events during these periods.

2 40. On information and belief, Plaintiff alleges that since at least January 23,
3 2010, Defendants have not implemented BAT and BCT at the Facility for discharges
4 of pH, TSS, iron, and other pollutants. Section B(3) of the General Permit requires
5 that Defendants implement BAT for toxic and nonconventional pollutants and BCT
6 for conventional pollutants by no later than October 1, 1992. As of the date of this
7 Complaint, the Facility has not implemented BAT and BCT.
8

9 41. On information and belief, Plaintiff alleges that since at least January 23,
10 2010, Defendants did not implement an adequate Storm Water Pollution Prevention
11 Plan for the Facility. Plaintiff is informed and believes, and thereupon alleges, that the
12 SWPPP prepared for the Facility does not set forth site-specific best management
13 practices for the Facility that are consistent with BAT or BCT for the Facility.
14 Plaintiff is informed and believes, and thereupon alleges, that the SWPPP prepared for
15 the Facility does not include an adequate assessment of potential pollutant sources,
16 structural pollutant control measures employed, a list of actual and potential areas of
17 pollutant contact, or an adequate description of best management practices to be
18 implemented at the Facility to reduce pollutant discharges. Plaintiff is informed and
19 believes, and thereupon alleges, that the SWPPP does not include each of the
20 mandatory elements required by Section A of the General Permit.
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27 42. Information available to Plaintiff indicates that as a result of these
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1 practices, storm water containing excessive pollutants is being discharged during rain
2 events from the Facility directly to the County of San Bernardino storm drain system,
3 which discharges to the Santa Ana River.
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5 43. Plaintiff is informed and believes that Defendants did not submit to the
6 Regional Board, since at least January 23, 2010, an annual report, that is signed and
7 certified by the appropriate corporate officer, outlining the Facility's storm water
8 controls and accurately certifying compliance with the General Permit Pursuant to
9 Sections A(9)(d), B(14), and C(9), (10) of the General Permit.
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11 44. Information available to Plaintiff indicates that Defendants have not
12 fulfilled the requirements set forth in the General Permit for discharges from the
13 Facility due to the continued discharge of contaminated storm water. Plaintiff is
14 informed and believes, and thereupon alleges, that all of the violations alleged in this
15 Complaint are ongoing and continuing.
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18 **CLAIMS FOR RELIEF**
19

20 **FIRST CAUSE OF ACTION**

21 **Implement the Best Available and**
22 **Best Conventional Treatment Technologies**
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

23 45. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
24 fully set forth herein.
25

26 46. The General Permit's SWPPP requirements and Effluent Limitation B(3)
27 require dischargers to reduce or prevent pollutants in their storm water discharges
28

1 through implementation of BAT for toxic and nonconventional pollutants and BCT
2 for conventional pollutants. Defendants have not implemented BAT and BCT at the
3 Facility for discharges of pH, TSS, iron, and other pollutants in violation of Effluent
4 Limitation B(3) of the General Permit.
5

6 47. Each day, since January 23, 2010, that Defendants did not develop and
7 implement BAT and BCT in violation of the General Permit is a separate and distinct
8 violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).
9

10 48. Defendants have not complied with the BAT/BCT requirements every day
11 since January 23, 2010. Defendants continue to not comply with the BAT/BCT
12 requirements each day that they fail to develop and fully implement BAT/BCT at the
13 Facility.
14
15

16 **SECOND CAUSE OF ACTION**
17 **Discharges of Contaminated Storm Water**
18 **in Violation of Permit Conditions and the Act**
19 **(Violations of 33 U.S.C. §§ 1311, 1342)**

20 49. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
21 fully set forth herein.

22 50. Discharge Prohibition A(2) of the General Permit requires that storm water
23 discharges and authorized non-storm water discharges shall not cause or threaten to
24 cause pollution, contamination, or nuisance. Receiving Water Limitations C(1) and
25 C(2) of the General Permit require that storm water discharges and authorized non-
26 storm water discharges shall not adversely impact human health or the environment,
27
28

1 and shall not cause or contribute to a violation of any water quality standards contained
2 in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin
3 Plan.
4

5 51. Plaintiff is informed and believes, and thereupon alleges, that since at least
6 January 23, 2010, Defendants have discharged polluted storm water from the Facility
7 in excess of applicable water quality standards in violation of the Discharge
8 Prohibition A(2) of the General Permit.
9

10 52. Plaintiff is informed and believes, and thereupon alleges, that these
11 discharges of contaminated storm water are causing or contributing to the violation of
12 the applicable water quality standards in a Statewide Water Quality Control Plan and/or
13 the applicable Regional Board's Basin Plan in violation of Receiving Water Limitation
14 C(2) of the General Permit.
15
16

17 53. Plaintiff is informed and believes, and thereupon alleges, that these
18 discharges of contaminated storm water are adversely affecting human health and the
19 environment in violation of Receiving Water Limitation C(1) of the General Permit.
20
21

22 54. Every day, since at least January 23, 2010, that Defendants have
23 discharged and continue to discharge polluted storm water from the Facility in violation
24 of the General Permit is a separate and distinct violation of Section 301(a) of the Act,
25 33 U.S.C. § 1311(a). These violations are ongoing and continuous.
26
27
28

THIRD CAUSE OF ACTION

**Prepare, Implement, Review, and Update
an Adequate Storm Water Pollution Prevention Plan
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

55. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

56. Section A and Provision E of the General Permit requires dischargers of storm water associated with industrial activity to develop and implement an adequate SWPPP no later than October 1, 1992.

57. Defendants have not developed and implemented an adequate SWPPP for the Facility.

58. Each day since January 23, 2010, that Defendants do not develop, implement and update an adequate SWPPP for the Facility is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

59. Defendants have been in violation of the SWPPP requirements every day since January 23, 2010. Violation continues each day that an adequate SWPPP for the Facility is not developed and fully implemented.

**FOURTH CAUSE OF ACTION
Develop and Implement an
Adequate Monitoring and Reporting Program
(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

60. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

61. Section B of the General Permit requires dischargers of storm water associated with industrial activity to have developed and be implementing a

1 monitoring and reporting program (including, *inter alia*, sampling and analysis of
2 discharges) no later than October 1, 1992.

3 62. Defendants have not developed and implemented an adequate monitoring
4 and reporting program for the Facility. Defendants' ongoing lack of an adequate
5 monitoring and reporting program is evidenced by, *inter alia*, the Facility's failure to
6 conduct visual observations as set forth above.
7
8

9 63. Each day since January 23, 2010, that Defendants did not develop and
10 implement an adequate monitoring and reporting program for the Facility in violation
11 of the General Permit is a separate and distinct violation of the General Permit and
12 Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite monitoring
13 and analytical results are ongoing and continuous.
14
15

16 **FIFTH CAUSE OF ACTION**
17 **Certification of Compliance in Annual Report**
18 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

19 64. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
20 fully set forth herein.

21 65. Defendants have not accurately certified compliance with the General
22 Permit in each of the annual reports submitted to the Regional Board since at least
23 January 23, 2010.
24

25 66. Each day since at least January 23, 2010, that Defendants do not
26 accurately certify compliance with the General Permit is a separate and distinct
27
28

1 violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).
2 Defendants continue to be in violation of the General Permit's certification requirement
3 each day they maintain an inaccurate certification of its compliance with the General
4 Permit.
5

6 **RELIEF REQUESTED**

7
8 Wherefore, Plaintiff respectfully requests that this Court grant the following
9 relief:

10 a. Declare Defendants to have violated and to be in violation of the Act as
11 alleged herein;
12

13 b. Enjoin Defendants from discharging polluted storm water from the
14 Facility unless authorized by the Permit;
15

16 c. Enjoin Defendants from further violating the substantive and
17 procedural requirements of the Permit;
18

19 d. Order Defendants to immediately implement storm water pollution
20 control and treatment technologies and measures that are equivalent to BAT or BCT
21 and prevent pollutants in the Facility's storm water from contributing to violations of
22 any water quality standards;
23

24 e. Order Defendants to comply with the Permit's monitoring and
25 reporting requirements, including ordering supplemental monitoring to compensate for
26 past monitoring violations;
27
28

1 f. Order Defendants to prepare a SWPPP consistent with the Permit's
2 requirements and implement procedures to regularly review and update the SWPPP;

3 g. Order Defendants to provide Plaintiff with reports documenting the
4 quality and quantity of their discharges to waters of the United States and their efforts
5 to comply with the Act and the Court's orders;

6 h. Order Defendants to pay civil penalties of \$37,500 per day per
7 violation for all violations pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C.
8 §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

9 i. Order Defendants to take appropriate actions to restore the quality of
10 waters impaired or adversely affected by their activities;

11 j. Award Plaintiff's costs (including reasonable investigative, attorney,
12 witness, compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C.
13 § 1365(d); and,

14 k. Award any such other and further relief, as this Court may deem
15 appropriate.

16 Dated: 1/23, 2015

Respectfully submitted,

17 By: 

18 Gideon Kracov
19 Attorneys for Plaintiff

EXHIBIT A

GIDEON KRACOV

Attorney at Law

801 South Grand Avenue
11th Floor
Los Angeles, California 90017

(213) 629-2071
Fax: (213) 623-7755

gk@gideonlaw.net
www.gideonlaw.net

November 21, 2014

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

James Hardie Building Products Inc.
C T Corporation System
Agent for Service of Process
818 West Seventh St. 2nd Fl.
Los Angeles, CA 90017

James Hardie Building Products Inc.
Luis Gries, CEO
26300 La Alameda, Ste 400
Mission Viejo, CA 92691

James Hardie Building Products Inc.
Haemish O'Donnell, Facility Coordinator
Chris Davis, Plant Manager
10901 Elm Avenue
Fontana, CA 92337

**RE: Notice Of Violations And Intent To File Suit Under The Federal Water
Pollution Control Act Concerning James Hardie Building Products, 10901
Elm Ave., Fontana, California 92337, WDID No. 8 36I010349**

Dear Mr. Gries, Mr. O'Donnell and Mr. Davis,

The Law Office of Gideon Kracov (hereinafter "**Office**") on behalf of the Center for Community Action and Environmental Justice (hereinafter "**CCA EJ**") is contacting you concerning Clean Water Act (hereinafter "**CWA**" or "**Act**") violations at James Hardie Building Products Inc.'s facility at 10901 Elm Avenue, Fontana, California 92337 (hereinafter "**Facility**") in San Bernardino County. This letter is being sent to you James Hardie Building Product Inc., Luis Gries, Chris Davis and Haemish O'Donnell, as the responsible owners, officers, or operators of the Facility (collectively hereinafter "**James Hardie**").

CCA EJ is a non-profit public benefit corporation dedicated to working with communities to advocate for environmental justice and pollution prevention. CCA EJ has individual members living in the community adjacent to the Facility and the Santa Ana River Watershed. CCA EJ

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and its individual members are deeply concerned with protecting the environment in and around their communities, including the Santa Ana River Watershed.

This letter addresses James Hardie's unlawful discharge of pollutants from the Facility through the municipal storm sewer system into Declez Channel and then into the Santa Ana River. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit No. CA S000001, California State Water Resources Control Board (hereinafter "State Board") Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "General Permit").¹ The WDID identification number for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Santa Ana Region ("Regional Board") is 8 36I010349. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the CWA requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (hereinafter "EPA"), and the State in which the violations occur.

As required by the Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, James Hardie is hereby placed on formal notice by CCAEJ that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CCAEJ intends to file suit in federal court against James Hardie under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the CWA and General Permit. These violations are described more extensively below.

I. BACKGROUND.

James Hardie filed a Notice of Intent to Comply With the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (hereinafter "NOI") and that NOI can be viewed on the State of California's State Water Resources Control Board website. In its NOI, James Hardie certified that the Facility is classified under SIC Code 3272 (Concrete and Gypsum Products). James Hardie is a fiber-cement product company, specializing in lap sidings, vertical sidings, shingles, panels, pipes, and ceramic tile backer boards. On information and belief, CCAEJ alleges that the 20-acre Facility collects and discharges storm water from its

¹ On April 1, 2014, the State Board reissued the General Permit, continuing its mandate that industrial facilities implement the best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT") and, in addition, establishing numeric action levels mandating additional pollution control efforts. State Board Order 2014-0057-DWQ. The new permit, however, does not go into effect until July 1, 2015. Until that time, the current General Permit remains in full force and effect.

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industrial site into five or more storm drain outfalls located at the Facility. The outfalls discharge into the County's municipal storm sewer system, which flows into Declez Channel, which flows into the Santa Ana River.

The Regional Board has identified beneficial uses of the Santa Ana River Watershed and established water quality standards for the river and its tributaries in "The Water Quality Control Plan (Basin Plan) for the Santa Ana River Basin" (hereinafter "**Basin Plan**"). See California Regional Water Quality Control Board, Santa Ana Region, The Water Quality Control Plan (Basin Plan) for the Santa Ana River Basin (2011), available at http://www.swrcb.ca.gov/rwqcb8/water_issues/programs/basin_plan/index.shtml.

The beneficial uses of these waters include, among others, municipal and domestic supply, agricultural supply, groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat, cold freshwater habitat, and wildlife habitat. The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible." *Id.* at 3-3. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." *Id.* Contact recreation use includes fishing and wading. *Id.* at 3-2. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people's use of the Santa Ana River for contact and non-contact water recreation.

The Basin Plan includes a narrative toxicity standard which states that "[t]oxic substances shall not be discharged at levels that will bioaccumulate in aquatic resources to levels which are harmful to human health." *Id.* at 4-18. The Basin Plan includes a narrative oil and grease standard which states that "[w]aste discharges shall not result in deposition of oil, grease, wax, or other material in concentrations which result in a visible film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses." *Id.* at 4-15. The Basin Plan includes a narrative suspended and settleable solids standard which states that "waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses . . ." *Id.* at 4-16. The Basin Plan includes a narrative floatables standard which states that "[w]aste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses." *Id.* at 4-11. The Basin Plan includes a narrative color standard which states that "[w]aste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affect beneficial uses." *Id.* at 4-10. The Basin Plan includes a narrative turbidity standard which states that "inland surface waters . . . shall be free of changes in turbidity which adversely affect beneficial uses. *Id.* at 4-18. The Basin Plan provides that "the pH of inland surface waters shall not be raised above

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8.5 or depressed below 6.5...” *Id.* at 4-15. The Basin Plan also includes a Nitrate standard of 10 mg/L as Nitrogen. *Id.* at 4-14.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (hereinafter “BAT”) and best conventional pollutant control technology (hereinafter “BCT”). The following benchmarks have been established for pollutants discharged by James Hardie: Total Suspended Solids (TSS) – 100 mg/L, pH – 6-9 s.u., and Iron (Fe) – 1.0 mg/L. U.S. Environmental Protection Agency, Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (2009) 52 (hereinafter “MSGP”).

II. ALLEGED VIOLATIONS OF THE NPDES PERMIT.

a. Discharges In Violation Of The Permit Not Subjected To BAT/BCT.

James Hardie has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are Total Suspended Solids, Oil and Grease, pH, Biochemical Oxygen Demand, and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.* §§ 401.15, 401.16.

In addition, Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water

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Limitation C(2). As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

James Hardie has discharged and continues to discharge storm water with unacceptable levels of TSS, pH, Iron, and other pollutants in violation of the General Permit. James Hardie's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility contained concentrations of pollutants in excess of numeric water quality standards established in the Basin Plan, evidencing past and ongoing violations of General Permit Discharge Prohibitions A(1) and A(2), Effluent Limitation B(3) and Receiving Water Limitations C(1) and C(2).

Date	Parameter	Observed Concentration	Basin Plan or EPA Water Quality Standard	Outfall (as identified by the Facility)
4/25/2014	pH	9.2 s.u.	6.5-8.5 s.u.	#1 C13
2/6/2014	pH	9.1 s.u.	6.5-8.5 s.u.	#1 R&D Parking Lot
5/6/2013	pH	9.8 s.u.	6.5-8.5 s.u.	C13 Easement #1
1/26/10	pH	9.1 s.u.	6.5-8.5 s.u.	C13 Easement #1
12/7/09	pH	8.8 s.u.	6.5-8.5 s.u.	S Trench Mid Easement #3
4/26/2014	Narrative	Cloudy water with debris floating	Basin Plan at 4-11; Basin Plan at 4-16	CI3
4/26/2014	Narrative	Cloudy water with debris floating	Basin Plan at 4-11; Basin Plan at 4-16	SE Easement #2

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4/26/2014	Narrative	Cloudy water with debris floating	Basin Plan at 4-11; Basin Plan at 4-16	S Trench Mid Easement #3
4/26/2014	Narrative	Fairly Clear water with some leaves/debris	Basin Plan at 4-11; Basin Plan at 4-16	R&D Parking #4
4/26/2014	Narrative	Very cloudy water/debris/leaves, solids	Basin Plan at 4-11; Basin Plan at 4-16	Emp. Parking Ent #5
2/6/2014	Narrative	Cloudy water with debris floating	Basin Plan at 4-11; Basin Plan at 4-16	C13
2/6/2014	Narrative	Cloudy water with debris floating	Basin Plan at 4-11; Basin Plan at 4-16	SE Outfall
2/6/2014	Narrative	Cloudy water with debris floating	Basin Plan at 4-11; Basin Plan at 4-16	S Trench Mid Easement #3
2/6/2014	Narrative	Leaves/debris	Basin Plan at 4-11	R&D Parking #4
2/6/2014	Narrative	Cloudy water/dirt/leaves	Basin Plan at 4-11; Basin Plan at 4-16	Emp. Parking Ent #5
5/6/2013	Narrative	Discharge cloudy/dirty	Basin Plan at 4-11; Basin Plan at 4-16	C13
5/6/2013	Narrative	Discharge cloudy/dirty	Basin Plan at 4-11; Basin Plan at 4-16	SE Outfall
5/6/2013	Narrative	Discharge cloudy/dirty	Basin Plan at 4-11; Basin Plan at 4-16	S Trench Mid Easement #3
5/6/2013	Narrative	Discharge had particles of debris, dirt & leaves	Basin Plan at 4-16	Emp. Parking Ent #5

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4/1/2013	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	SE Outfall
4/1/2013	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	S Trench Mid Easement #3
4/1/2013	Narrative	Discharge had leaves/dirt	Basin Plan at 4-16	Emp. Parking Ent #5
1/25/2013	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	SE Outfall
1/25/2013	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	S Trench Mid Easement #3
1/25/2013	Narrative	Discharge had leaves/dirt	Basin Plan at 4-16	Emp. Parking Ent #5
11/8/2012	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	SE Outfall
11/8/2012	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	S Trench Mid Easement #3
10/11/2012	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	SE Outfall
10/11/2012	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	S Trench Mid Easement #3
12/20/2011	Narrative	Some leaves debris	Basin Plan at 4-16	C13
12/20/2011	Narrative	Some leaves debris	Basin Plan at 4-16	SE Outfall

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12/20/2011	Narrative	Some leaves debris	Basin Plan at 4-16	S Trench Mid Easement #3
12/20/2011	Narrative	Some leaves debris	Basin Plan at 4-16	R&D Parking #4
12/20/2011	Narrative	Some leaves debris	Basin Plan at 4-16	Emp. Parking Ent #5
10/7/2011	Narrative	Some leaves debris	Basin Plan at 4-16	C13
10/7/2011	Narrative	Some leaves debris	Basin Plan at 4-16	SE Outfall
10/7/2011	Narrative	Some leaves debris	Basin Plan at 4-16	S Trench Mid Easement #3
10/7/2011	Narrative	Some leaves debris	Basin Plan at 4-16	R&D Parking #4
10/7/2011	Narrative	Some leaves debris	Basin Plan at 4-16	Emp. Parking Ent #5
1/26/2010	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	C13
1/26/2010	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	SE Outfall
1/26/2010	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	S Trench Mid Easement #3
1/26/2010	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	R&D Parking #4

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1/26/2010	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	Emp. Parking Ent #5
12/07/2009	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	C13
12/7/2009	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	SE Outfall
12/7/2009	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	S Trench Mid Easement #3
12/7/2009	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	R&D Parking #4
12/7/2009	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	Emp. Parking Ent #5

The information in the above table reflects data gathered from James Hardie's self-monitoring during the 2009-2010, 2012-2013 and 2013-2014 wet seasons. CCAEJ alleges that during each of these wet seasons and continuing through today, James Hardie has discharged storm water contaminated with pollutants at levels or observations that exceed or violate the one or more applicable water quality standards, including but not limited to each of the following:

- pH – 6.5 – 8.5 s.u. (Basin Plan);
- Floatables – Waste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses. (Basin Plan at 4-11);
- Suspended/Settleable Solids – Waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses. (Basin Plan at 4-16).

The following discharges of pollutants from the Facility contained concentrations of pollutants in excess of numeric water quality benchmarks established by EPA in the MGSP ("EPA Benchmarks"), evidencing past and ongoing violations of General Permit Discharge Prohibitions A(1) and A(2), Effluent Limitation B(3) and Receiving Water Limitations C(1) and C(2).

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Date	Parameter	Observed Concentration	EPA Benchmarks	Location (as identified by the Facility)
4/25/2014	pH	9.2 s.u.	6-9 s.u.	#1 C13
2/6/2014	pH	9.1 s.u.	6-9 s.u.	#1 R&D Parking Lot
5/6/2013	pH	9.8 s.u.	6-9 s.u.	C13 Easement #1
1/26/10	pH	9.1 s.u.	6-9 s.u.	C13 Easement #1
4/25/2014	TSS	1700 mg/L	100 mg/L	#1 C13
4/25/2014	TSS	630 mg/L	100 mg/L	#2 S.E. Outfall
4/25/2014	TSS	240 mg/L	100 mg/L	#5 Employee Parking
2/6/2014	TSS	510 mg/L	100 mg/L	#1 R&D Parking Lot
2/6/2014	TSS	800 mg/L	100 mg/L	#2 S.E. Outfall
2/6/2014	TSS	320 mg/L	100 mg/L	#4 C-13
5/6/2013	TSS	940 mg/L	100 mg/L	C13 Easement #1
5/6/2013	TSS	540 mg/L	100 mg/L	SE Easement #2

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1/26/2010	TSS	290 mg/L	100 mg/L	Emp. Parking Ent #5
4/25/2014	Iron	65 mg/L	1.0 mg/L	#1 C13
4/25/2014	Iron	21 mg/L	1.0 mg/L	#2 S.E. Outfall
4/25/2014	Iron	9.5 mg/L	1.0 mg/L	#5 Employee Parking
2/6/2014	Iron	31 mg/L	1.0 mg/L	#1 R&D Parking Lot
2/6/2014	Iron	23 mg/L	1.0 mg/L	#2 S.E. Outfall
2/6/2014	Iron	11 mg/L	1.0 mg/L	#4 C-13
2/6/2014	Iron	2.9 mg/L	1.0 mg/L	#5 Employee Parking
5/6/2013	Iron	140 mg/L	1.0 mg/L	C13 Easement #1
5/6/2013	Iron	16 mg/L	1.0 mg/L	SE Easement #2
5/6/2013	Iron	6.9 mg/L	1.0 mg/L	Emp. Parking Ent #5
10/11/2012	Iron	2.4 mg/L	1.0 mg/L	C13 Easement #1
10/11/2012	Iron	2.4 mg/L	1.0 mg/L	Emp. Parking Ent #5

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2/10/2012	Iron	2.1 mg/L	1.0 mg/L	SE Easement #2
12/12/2011	Iron	2.2 mg/L	1.0 mg/L	C13 Easement #1
12/12/2011	Iron	1.9 mg/L	1.0 mg/L	SE Easement #2
12/12/2011	Iron	1.2 mg/L	1.0 mg/L	S Trench Mid Easement #3
12/12/2011	Iron	2.1 mg/L	1.0 mg/L	R&D Parking #4
12/12/2011	Iron	1.2 mg/L	1.0 mg/L	Emp. Parking Ent #5
1/30/2011	Iron	2.8 mg/L	1.0 mg/L	C13 Easement #1
1/30/2011	Iron	1.2 mg/L	1.0 mg/L	S Trench Mid Easement #3
1/30/2011	Iron	1.5 mg/L	1.0 mg/L	Emp. Parking Ent #5

The information in the above table reflects data gathered from James Hardie's self-monitoring during the 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014 wet seasons. CCAEJ alleges that during each of those rainy seasons and continuing through today, James Hardie has discharged storm water contaminated with pollutants that exceed one or more applicable EPA Benchmarks, including, but not limited to, each of the following:

- Total Suspended Solids – 100 mg/L;
- pH – 6-9 s.u.;
- Iron – 1.0 mg/L.

CCAIEJ's investigation, including its review of James Hardie's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable

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water quality standards and the EPA's benchmark values, indicate that James Hardie has not implemented BAT and BCT at the facility for its discharges of TSS, pH, Iron, and other pollutants in violation of Effluent Limitation B(3) of the General Permit. James Hardie was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, James Hardie is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed in the table above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. CCAEJ alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since at least November 21, 2009 and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CCAEJ alleges that James Hardie has discharged storm water containing impermissible levels of TSS, pH, Iron, and other pollutants in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.²

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the CWA, James Hardie is subject to penalties for violations of the General Permit and the Act since November 21, 2009.

b. Failure To Develop And Implement An Adequate Monitoring And Reporting Program.

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the "quality and quantity of the facility's storm water discharges from the storm event."

² The rain dates in Attachment A are days on which an average of 0.1 or more rain fell as measured by a weather station located in Riverside approximately 14 miles away from the Facility. Data from the weather station is available at <http://www.ipm.ucanr.edu/WEATHER/SITES/riverside.html> (Last accessed on November 21, 2014). The rain dates also include days when the facility reported discharge in its Annual Reports.

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The above-referenced data was obtained from the Facility's monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by James Hardie is not representative of the quality of the Facility's various storm water discharges and that the Facility failed to monitor all qualifying storm water discharges, CCAEJ alleges that the Facility's monitoring program violates Sections B(3), (4) and (7) of the General Permit.

CCAIEJ also alleges on information and belief that James Hardie failed to conduct visual observations in November 2009, March 2010, April 2010, April 2011, November 2011, January 2012, March 2013, October 2013, November 2013, December 2013, and March 2014 claiming that there were no qualifying rain events when in fact there were numerous such events during these periods.

The above violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, James Hardie is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since November 21, 2009.

c. Failure To Analyze For Mandatory Parameters.

With some limited adjustments, facilities covered by the General Permit must sample two storm events per season from each of their storm water discharge locations. General Permit Section B(5)(a). Collected samples must be analyzed for Total Suspended Solids, pH, Specific Conductance and either Total Organic Carbon or O&G. *Id.* at Section B(5)(c)(i). Facilities must also analyze their storm water samples for "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities," including copper, lead, zinc, aluminum, chemical oxygen demand, and iron. *Id.* at Section B(5)(c)(ii); MSGP at 52, 102. Additionally, because James Hardie filed its NOI under SIC Code 3272, it must sample for the additional pollutants of Iron. *See* MSGP at 57, Table 8.E-1.

CCAIEJ's investigation of the James Hardie's monitoring data indicates that James Hardie failed to analyze for iron during the 2009-2010 wet season.

Each failure to analyze for mandatory parameters constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the CWA, James Hardie is subject to penalties for violations of the General Permit and the Act since November 21, 2009.

d. Failure To Prepare, Implement, Review and Update An Adequate Storm Water Pollution Prevention Plan.

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Section A and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan (hereinafter “SWPPP”) no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the General Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices (hereinafter “BMPs”) to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). The SWPPP must also include a certification statement and signature (General Permit, Section C(10)).

CCA EJ’s investigation of the conditions at the Facility as well as James Hardie’s Annual Reports indicate that James Hardie has been operating with an inadequately developed SWPPP in violation of the requirements set forth above. James Hardie has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. James Hardie has been in continuous violation of Section A and Provision E(2) of the General Permit every day since November 21, 2009, at the very latest, and will continue to be in violation every day that James

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Hardie fails to prepare, implement, review, and update an effective SWPPP. James Hardie is subject to penalties for violations of the Order and the Act occurring since November 21, 2009.

e. Failure To File True And Correct Annual Reports.

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), C(10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

During the 2009-2010, 2010-2011, 2011-2012, 2012-2013, and 2013-2014 wet seasons, James Hardie inaccurately certified in the Annual Report that the facility was in compliance with the General Permit. Consequently, James Hardie has violated Sections A(9)(d), B(14), C(9) and C(10) of the General Industrial Storm Water Permit every time James Hardie failed to submit a complete or correct report and every time James Hardie or its agents failed to comply with the Act. James Hardie is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since November 21, 2009.

III. Persons Responsible For the Violations.

CCA EJ puts James Hardie Building Products Inc., Luis Gries, Chris Davis and Haemish O'Donnell on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CCA EJ puts James Hardie Building Products Inc., Luis Gries, Chris Davis and Haemish O'Donnell on notice that it intends to include those persons in this action.

IV. Name And Address Of Noticing Parties.

The name, address and telephone number of CCA EJ is as follows:

Penny Newman
Executive Director
Center for Community Action and Environmental Justice
P.O. Box 33124
Jurupa Valley, CA 92519
Tel. (951) 360-8451

V. Counsel.

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CCA EJ has retained counsel to represent it in this matter. *Please direct all communications to:*

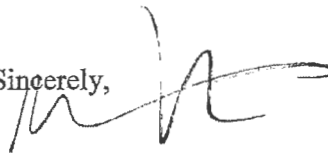
Gideon Kracov
The Law Office of Gideon Kracov
801 South Grand Avenue
11th Floor
Los Angeles, California 90017
Tel: (213) 629-2071
E-Mail: gk@gideonlaw.net

VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects James Hardie to a penalty of up to \$37,500 per day per violation. In addition to civil penalties, CCA EJ will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CCA EJ believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CCA EJ intends to file a citizen suit under Section 505(a) of the Act against James Hardie and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CCA EJ would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CCA EJ suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CCA EJ does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Gideon Kracov
The Law Office of Gideon Kracov
Attorneys for Center for Community Action and
Environmental Justice

SERVICE LIST

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
12000 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Jared Blumenfeld, Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA 94105

Kurt V. Berchtold, Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street
Suite 500
Riverside, CA 92501-3348

*Served via Certified Mail, Return Receipt Requested.

ATTACHMENT A

Rain Dates, James Hardie Building Products Inc., Fontana, California

11/28/2009	12/7/2009	12/12/2009
12/13/2009	1/17/2010	1/18/2010
1/19/2010	1/20/2010	1/21/2010
1/22/2010	1/26/2010	2/5/2010
2/6/2010	2/09/2010	2/22/2010
2/27/2010	3/04/2010	3/06/2010
4/05/2010	4/12/2010	4/20/2010
4/22/2010	11/08/2010	11/20/2010
11/21/2010	11/24/2010	12/05/2010
12/06/2010	12/16/2010	12/18/2010
12/19/2010	12/20/2010	12/21/2010
12/22/2010	12/25/2010	12/29/2010
1/02/2011	1/03/2011	1/30/2011
2/16/2011	2/18/2011	2/19/2011
2/25/2011	2/26/2011	3/20/2011
3/21/2011	3/23/2011	4/08/2011
5/18/2011	7/31/2011	10/05/2011
11/04/2011	11/06/2011	11/12/2011
11/20/2011	12/12/2011	1/21/2012
1/23/2012	2/15/2012	2/27/2012
3/17/2012	3/18/2012	4/11/2012
4/13/2012	4/25/2012	4/26/2012
8/30/2012	10/11/2012	11/08/2012

12/12/2012	12/13/2012	12/24/2012
12/29/2012	1/24/2013	1/25/2013
2/08/2013	2/19/2013	3/08/2013
3/09/2013	5/06/2013	7/20/2013
10/09/2013	11/21/2013	12/07/2013
2/06/2014	2/28/2014	3/01/2014
4/01/2014	4/02/2014	4/25/2014